IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.9262 OF 1999

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PARMAR PRABHATBHAI MAFATLAL

Versus

STATE OF GUJARAT & ORS.

Appearance:

1. Special Civil Application No. 9262 of 1999

MR. R.C. JANI for Petitioner

MR. M.S. RAO, AGP for Respondent Nos. 1,2

MS.VINITA VINAYAK for

M/S.THAKKAR ASSOCIATES for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 29/03/2004

ORAL JUDGEMENT

1. Mr.M.S.Rao, learned AGP for respondent nos.1 and 2, and Ms.Vinita Vinayak, learned Advocate for respondent no.3, submitted that this matter is similar to that of

Special Civil Application No.8166 of 1999, which was heard and decided by this Court on 26th March, 2004. This matter pertains to Sabarkantha District, which had different strength of Talati-cum-Mantri cadre. Except that, there are some minor differences on factual aspects, the law point involved is the same.

2. The present petition is filed by the petitioner being aggrieved of non-grant of appointment to the post of Talati-cum-Mantri. The case of the petitioner is that he applied for the post of Talati-cum-Mantri in response to an advertisement dated 28th February, 1991 for Sabarkantha District. The advertisement pertained to 32 posts, of which 12 were for General Category, while 3 were reserved for Scheduled Caste, 5 for Scheduled Tribes, 3 for S.E.B.C. and 9 for physically challenged persons. On 9th February, 1992, examination was held and after completing the process of selection, the petitioner was selected. He was placed at Serial No.16 in the Select List. He was informed about his selection by a letter dated ___ (illegible) July 1992, a copy of which is placed at Annexure-B collectively (page-20). It is contended by the petitioner that on account of 10% cut imposed by the Government vide Government Resolution dated 28th October, 1991, the petitioner was not appointed. On the other hand, in Bharuch District where, in the year 1991, an advertisement for the recruitment of Talati-cum-Mantri was issued, all the posts were filled in. The petitioner wrote several letters to respondent no.2-Board, including various Ministers for issuing appointment order, but, he did not hear anything favourable. Hence, along with several other similarly situated persons, he resorted to hunger strike from 12th February 1996 at Sector CH-5. This was brought to an end on an assurance given by the Minister and Members of Legislative Assembly on 15th February, 1996.

3. The petitioner, having not received the appointment, approached this Court by filing this petition on 23rd November, 1999, that is, almost after four years.

The learned Advocate for respondent no.3 i.e. District Development Officer, Sabarkantha District, and the learned AGP, Mr.M.S.Rao, for respondent nos.1 and 2, submitted that the petition deserves to be dismissed on a short ground of delay and latches. It is emphatically submitted by the learned Advocates for the respondents that the advertisement was issued on 28th February, 1991; a Select List was prepared in the year 1992, on the basis of which appointment is claimed. The petitioner, after

long seven years, has come to this Court in the year 1999 without setting any reason for approaching this Court belatedly. The learned Advocates submitted that it appears from the petition that the only reason which motivated the petitioner to approach this Court is a decision of this Court (Coram:S.K.Keshote, J.) in Special Civil Application No.7323 of 1997, which came to be decided on 30th June, 1999. The learned Advocate for respondent no.3 has placed on record a copy of the paragraphwise remarks, which, according to her, was received by the learned Advocate, after the affidavit-in-reply was filed by Mr.C.M.Vaghela, Deputy District Development Officer (Panchayat), Sabarkantha District Panchayat dated 25th January, 2000. In the affidavit, it is stated that it was only in view of 10% cut that it was not possible for the respondents to offer appointment to the petitioner. It is further stated that the Select List was prepared in the year 1992 and the same has lapsed as the Government has not extended the validity of the said list beyond 30th June, 1997. This date is same for all the districts in the State and in no district, Select List was continued to be valid beyond this date. It is also stated in the affidavit-in-reply that in addition to the aforesaid cut of 10% by Government Resolution dated 28th October, 1991, cut of further 10% is imposed by another Government Resolution dated 9th September, 1998. This was in addition to the earlier prevailing cut of 10%. This later 10% cut was to be implemented in two phases; the first phase of 5% was to be effected by 31st March, 1999 and the second phase of remaining 5% was to be effected by 31st March, 2000. In view of that, there was no question of offering any appointment to the petitioner. In paragraphwise remarks, which are placed on record, it is mentioned that in Sabarkantha District, sanctioned strength of Talati-cum-Mantri is of 603, of which on account of 20% cut, 120 posts are to be kept vacant, meaning thereby, only 483 posts were to be filled in. As against that, 514 persons were holding the post of Talati-cum-Mantri. Thus, the numbers of posts, which were to be kept vacant under 20% cut were greater than the actual vacant posts and, therefore, it was not possible to give appointment to any new candidate from the Select List or the Waiting List.

4. In the above facts and circumstances of the case, it is clear that the petitioner has approached this Court belatedly, in the matter of advertisement of 1991, Select List of 1992, only in the year 1999. The petitioner, even having resorted to the hunger strike in the year 1996, had chosen to await for three more years. Thus,

the petitioner has not approached this Court as expeditiously as possible, which is one of the condition precedent for exercising the discretion under Article 226 of the Constitution of India, hence, no relief can be granted.

5. In the result, the petition fails and is dismissed. Rule is discharged. No order as to costs.

(Ravi R. Tripathi, J.)

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